Supreme Court, U.S.
FILED
APR 22 1985
ALEXANDER L. STEVAS
CLERK

84-1959

IN THE

SUPREME COURT OF THE UNITED STATES

No: _____

OCTOBER TERM

MITCHELL E. JAMES, SR. Petitioner

v.

ALABAMA STATE PERSONNEL BOARD, et.al's.

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

(ALL RECORDS REVIEW, 84-7163-83-7655)

Mitchell E. James, Sr.

Route 2, Box 465

Tallassee, Alabama 36078

1-205- 283-8468

6 11 PP

1. WHETHER, IF TESTS TIME, CONDITIONS, AND CIRCUMSTANCES APPLIED DO IMPEACH THE FINDINGS OF THE DISTRICT COURT.

2. WHETHER, DISCRETION IS VALID, WHERE MADE KNOWN IN IMPEACHMENT OF FINDINGS.

3. WHETHER, ATTORNIES ARE IMMUNE AND CLIENTS INDIVIDUALLY CHARGED, LACKING GOOD INTENTS, IN DEFAULT, AND GRANTED RELIEF TO PROCEED TO DENY IS JUSTICE IN EQUAL TREATMENT UNDER THE LAW.

4. WHETHER, OUTSIDE INFLUENCES IS A CAUSE TO CONDSIDER IN DUE PROCESS, OR EQUAL TREATMENT UNDER MAXIMS OF EQUITY.

5. WHETHER,STRIKING ASSIGNED JUDGE IS EQUITY, SO ONLY ONE JUDGE SETS OVER ALL DENIAL PROCESS OF PRO SE CAUSES.

6. WHETHER CLOUDS OF CONSPIRACY DENY EQUITY IN MOTION FOR REVIEW OF RECORDS.

7. WHETHER, INTENT TO NONFEASE CAUSE END ALL TORTS RIGHTS BY CONTRACT LAWS.

8. WHETHER LAWS OF REVERSE DISCRIMINATION APPLY TO [FORWARD DISCRIMINATION]ACTS.

LISTING OF PARTIES IN THE CAUSES:

EDWIN M. DIXON, VELMA BLACKWELL, AND C. FRANK McCORKLE, Individually, etc., STATE PERSONNEL BOARD: HALYCON BALLARD, and J.S. FRAZER, Individually, etc. STATE PERSONNEL DEPARTMENT: B. G. BRYANT, Individually, etc. DEPARTMENT OF YOUTH SERVICES BOARD: GEORGE M. PHYFER, G. WAYNE BOOKER, AND RICHARD S. JORDAN, Individually, etc. DEPARTMENT OF YOUTH SERVICES: JOHN RICKIKKI, AND JIM NORTHCUT, Individually, (DEPARTMENT OF YOUTH SERVICES VOCATIONAL PROGRAMS), ET. AL's.

EXCEPTED: Jerry Vanderholf, Individually. Federal Appealed to higher Board: EXCEPTED All not recorded excepted, EXCEPT BY THE DISCRETION OF THE COURT.

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1. LACKING DUE PROCESS, EQUAL TREATMENT IN APPLICATION OF RULES,LAWS STATUTES,CIVIL RIGHTS ACTS, CODES, INTENT TO NONFEASE CAUSING MALFEASANCE OF CONSTITUTIONAL RIGHTS. IMPEACHING DISTRICT COURT RULINGS. FACTS IMPEACHED OF DISTRICT COURT BY INVIDIOUS DISCRIMINATION,INTENTS BAD OF RESPONDENTS "HAVING NO CAUSE"

2. COLOR OF STATE, OTHER CASES CLOUDS FOR DISPARATE TREATMENT IN "OTHER INFORMATION. DENYING BY INTENTS PRIOR TORTS IN RETALIATION TO EEOC.

3. EQUAL TREATMENT VIOLATED IN BILL OF RIGHTS, 1st, 4th, 6th, 8th, 11th and 14th, AMENDMENTS, Art. 4 OF THE UNITED STATES CONSTITUTION. CODES AND CONSTITUTION OF ALABAMA 1975(seq).

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IN THE

SUPREME COURT OF THE UNITED STATES

No:_____

MITCHELL E. JAMES, SR., Petitioner

v.

ALABAMA STATE PERSONNEL BOARD, et. al's

v. Respondents

EDWIN M. DIXON, INDIVIDUALLY, ETC.et'al's

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

(ALL RECORDS REVIEW 84-7163-83-7655)

Petitioner, Mitchell E. James, Sr., seeks a Writ of Certiorari, review by time conditions, and circumstances, granting sequence equity. End disparate treatment. Grant due process, equal justice, equal reliefs in rules by Maxims of Equity in causes. The Constitution assures citizen

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

rights. Court require fair and full tests. Relief is asked from disparate treatment. Where laws, torts,contracts, statutes and codes of Alabama impeaches all findings of District Court and e. seq.. Relief is sought from Constitutional Inadequacy.

OPINIONS BELOW

The United States Court of Appeals Eleventh Circuit denied Reconsideration January 17, 1985, re-affirming denial all relief request confirming all prior denying District Court. Appeals Court denied Reconsideration Emergency Motion, March 26, 1985(Appendix 2-11) involving the District Court Orders March 7, 1985(A-16-20). A mandate issued by Clerk January 30, 1985, dated, September 7, 1984 is not shown, due to (A-16-20 estoppel). District Court. Appealed 28 USC 2101 n (7.3)b. and 28 USCA 1252 (seq) 1254(3), 1651(seq).

This petition for Writ of Certiorari

is filed within 90 days of reconsideration denied by order of Appeals Court,(A-1-11), and within Rule 10(seq), District Court actions March 7, 1985. Rule 12.4 and 18 in review of causes. Court Jurisdiction 28 USC#2101(a)(b)(c),(e),38USC 2022 e.seq.28 USC#2403(seq) 28 USC 451(seq). Veteran Rule 47(seq). Court Jurisdiction invoked under Constitution, United States. Rule 51 Writ of Certiorari May 30, 1985

CONSTITUTIONAL PROVISION

Fourteenth Amendment(1)...[N]o State shall make or enforce any law which shall abridge the priviledges or immunities of citizen of the United States, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (5) The Congress shall have power to enforce, by appropriate legislation.

Amendment, First...(A)nd to petition the Government for redress of grievances. Amendment,Six...(I)n all...prosecutions...right to a speedy trial...by an impartial jury of the State and district ...be...cause...have counsel... Amendment, Eight...(N)or cruel and unusual punishment inflicted. ARTICLE FOUR:(Section 1)...Congress...prescribes the manner...Acts,Records, and Proceedings shall be proved,...effects... (Section 2)...Citizens...entitled to all Priviledges and Immunities of Citizens... CODES OF ALABAMA, 1975(seq), 1984-85 Sup.

STATEMENT OF FACTS

Petitioner, appealed to State Personnel Board for employment rights in due process and equal treatment by codes, rules, and affirmative action plan and Constitution of the United States. Petitioner had veterans preference, no relief found

under 36-26-1 Codes of Alabama 1975(seq). Torts continued by individuals at all levels, denying substance in Codes 44-1-20,seq. and 36-26-1 seq. sup. 1984-85, codes for Constitutional Inadequacy. EEOC. granted tort causes at intervals of times. Respondents continued torts in retaliation by deceits of using same job number, then used reports to punish Petitioner in ratings for going to courts, boards, and EEOC. The District Court allowed impeached causes of Respondents to take precedence. The Six amendment rights to cause and codes of Alabama in Hearing Officer's requirement estoppels findings(A-12-15) of Respondents causes in sequence Board Ruling (A-15) and District Court findings of facts(A-16-37).

The cause is missing in evidence by Bill of Rights, tests needed causes, sequence of facts (A-12-37) and fourteenth amendment. Impeaching all findings in

codes of Alabama 1975(seq). The finding of facts of the District Court, impeached but sustained by discretion, in pro se cause. Tests required in fair and full denied, Mt. Healthy Bd of Education, vs. Doyle, 429 U.S. 274 (1977), prior claims of negligence apply in causes.

District Court was informed of causes of impeachment. Where rules seems to only apply to the Petitioner. No credit was given to tests of (1)Time, (2) Conditions and (3) Circumstances as William v. Bd of Regents, 629,F 2d 993,1002,(5th Cir(1980). Golden v. Local 55 Intern, Ass'n,Fire-fighters, C.A. (1980). Monell v. Dept. of Social Services, 436 U.S. 658 (1978). Civil Rights Acts of 1866, 1870,1871, and 1964 and 1972; 42 USCA 1983, 1981, 1985(2) (3) and 1986(seq). Bill of Rights, Title VI, and Title VII. Fourteenth Amendment. Civil Rights assured by 18 USCA 241,242 (seq), 243,245(b) and 246, invidious dis-

crimination, under color of state,denying causes, Appendix 12-14 and 15. Violating Alabama Code 36-26-27 (seq) Rules of the State Personnel Board and prior shown the District Court other violations of each level in impeached procedures. Impeaching the District Court findings in all causes lacking [fact of cause] in 82-885-N and 84-H-1173-N. Where 42 USCA 2000 e(seq) 28 USCA 1331, 1343(seq) and 1346(seq) in the authority of the District Court. Where all actions are denied by overview of clouds of outside influences or "Phamptom" causes, prima facie and factual evidence "Other Information", Appendix 15.

District Court allowed disparate acts,contract law, to negate torts. And orders, proceed out of sequence of events by request of Respondents for 82-595-N Appendix 20-21 in case 82-885-N (83-7655) at Appendix 22-37., stating no prejudice, but found prejudiced by that action, and

denied redress. The cases were filed under right to sue letters EEOC,issued torts in disparate treatment, denied in deceits of contract laws out of sequence torts. Disparate treatment continued by granting all or most all requests of Respondents based on impeached causes and estoppeled actions found in facts and in impeached for cause. Color of state prevailed to deny cause in requirement Bill of Rights, equal rights, and due process. And tests of time, conditions, and circumstance ignored for relief of Petitioner. Where disparate treatment continued in un-known rules against a pro se in Appeals Court at Appendix 1-12. Petitioner prior claimed "paradoxes" existing, arranged in rules for perfect defense, in review in Certiorari. Where status all causes, and to deny by changes of status all causes, denying relief to Petitioner by "Government Parties". Clouds exist of Federal and

State in review, prevailing by color of state, except for impeachment in facts.

ARGUMENT FOR GRANTING CERTIORARI

Disparate treatment, missing test(1) Time,(2) Conditions,and (3) Circumstances. Test are required by this Court in Mt. Healthy, supra., and William, supra. The tests when validated show many issues of Constitutional Guarantees denied: (1)Equal Treatment and due process.(2) Disparate to race,race animus, under color of state and clouds of "Government Parties". (3) Clouds of a "scam", other causes forming clouds of a conspiracy announced in facts, review in certiorari (4) Discrimination (Forward) as (Reverse)...Black Veteran under the Affirmative Action Plan and for Specialist IV (Superintendent). Where Veteran Petitioner considered in 1970 as qualified (1970-1981) denied by Whites until denied by invidious discrimination

response to EEOC actions (stated) and (announced conspiracies) to deny equity by color of state. (Regents, University of California v. Bakke, U.S. (1978). Reviews in certiorari will establish in the case 2709-N facts educationally, beyound peers or requirements, experience above ratings granted, affirmative actions denied by race, only black as Specialist IV, 1976, by race animus and color of state. 4) White Supremacy in action by deceits of Forward Discrimination(Reverse), using Black on Black action to deny laws of torts. This done and found, by reward systems, deceits in ways invidious in Certiorari. (5) Clouds of Federal Government benefiting, thereby ending (A) Fair Trial (B) Equal treatments (C) Due Process (D) Color of state prevailing in impeached causes by discretion and (E) Preventing or failing to grant a new cause of action by threats. Where fair and full equity, prior requested.

in a pro se cause in rules, cross appeals removal of latches, consolidation and requests for extention of time or remands to end disparate treatment denied.(F) The District Court found disparate treatment, Attornies defending "cause" same conducted impeaching all, [replacing] Personnel Board, except for signitures influenced (Appendix 15), and (G) Where motion to enjoin such acts denied in records, are before this Court in prima facie evidence in, "cause" missing in Codes but disparate treatment.

CONCLUSION

"Cause" impeached,known and shown. Other causes and cases influence, creating disparate treatment upon this Petitioner by denying Article Four Rights, Fourtheenth, First, Fourth, Six, Eight and Eleventh Amendments adversely in impeached causes prevailing in time,condition and circumstances. Disparate treatment denys many

Congressional guarantees, Bill of Rights.

Disparate treatment prevails to deny EEOC...cause. The request, at this Court is for Certiorari of record, Rule 27(seq) in granting a new cause or consider the suffering of Petitioner and grant [Relief] to Petitioner. Respondents found acting under color of state laws, impeached for causes. Petitioner begged Respondents to negotiate, but disparate treatment increased and confirmed in courts below. No "cause" can exist for dismissal impeached and missing in evidence at all levels of findings of facts. No facts attest precedence exists but "Other" causes. The Petitioner asks this court for a remand Appeal Court [Relief], Wrongful Acts or and Summary Judgment of action in sequence of EEOC in a veteran's cause Constitutional inadequacy, Code 36-26-27 Ala.

RESPECTFULLY SUBMITTED:

Mitchell E. James, Sr., Petitioner, Pro se

PROOF OF SERVICES

STATE OF ALABAMA) (REHEARING)

COUNTY OF ELMORE)

MITCHELL E. JAMES,SR., after being duly sworn, dispose and says that persuant to Rule 28.4 (a) and Rule 51(seq) of this Court he served the within PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT on Counsels for Respondents by enclosing a Copy therein in an envelop first class postage prepaid addressed there to:

Hon. Charles Graddick,Att. Gen. Alabama
Richard Meadows, Asst. Att. Gen. Ala.
64 North Union Street, Rm.250, St.Bldg.
Montgomery, Alabama 36130

Thomas Christian, Asst.Att. Gen. Ala.
Robert Childers. Att.
428 South Lawerence Street
Montgomery, Alabama 36104

William Samford, II, Asst. Att. Gen.
Department of Youth Services
P. O. Box 66
Mt. Meigs, Alabama 36057

Hon. George C. Wallace, Governor, Ala.
% Hon. Charles Graddick; Att. Gen.Ala.
64 North Union Street, Rm.250, St.Bldg.
Montgomery, Alabama 36130

Solicitor General/and/ Hon. Ed. Meese
Department of Justice (same)
Washington D.C. 20530

Eleventh Circuit Court of Appeals, Clerk
50 Spring Street
Atlanta, Georgia 30303-3147

Petition restricted to grounds specified in Rule 51.2 and presented in good faith mailed in Tallassee, Alabama, in response to May 30, 1985 Court requirement, causes Appeal Court Order denying re-consideration January 17, 1985, and March 26, 1985 request for emergency re-hearing, Appeals Court and for remand plead, in order May 30. 1985 for Court Rule 18.

Mitchell E. James, Sr., Petitioner

Subscribed and attested this 11th date of June, 1985. Glenda L. Sanders
Notary Public State and County

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No: 84-7163

83-7655

MITCHELL E. JAMES, SR.,Plaintiff-Appellant

v

ALABAMA STATE PERSONNEL BOARD, ET' AL's

Defendants-Appellees

On Appeal from the United States District Court for the Middle District of Alabama

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Before RONEY, FAY and JOHNSON, Circuit Judges

BY THE COURT: Appellant's motion for reconsideration is denied.

/Initials/ JAN. 17, 1985

UNITED STATES COURT OF APPEALS

ELEVENTH CIRCUIT

OFFICE OF THE CLERK

50 Spring Street S.W.

Atlanta, Georgia 30303-3147

SPENCER D. MERCER,Clerk March 26, 1985

Mr. Mitchell E. James, Sr.

Route 2, Box 465

Tallassee, Alabama 36078

Re: 84-7163 JAMES v. ALA.STATE PERS BD.

83-7655 JAMES v. ALA.STATE PERS BD.

Dear Mr. James:

As we previously stated in our letter of March 5, 1985, this office is not authorized to receive further filings of this sort.

Any future remedy for you may lie in the United States Supreme Court. Again, I enclose the information sheet prepared by the Clerks of the United States Supreme Court in regards to filing there. I must

caution you there is a time limit for proceeding in that court.

Therefore, I am returning to you, unfiled the documents lodged in this court.

Sincerely,

SPENCER D. MERCER, CLERK

by: Warren A. Godfrey/s/

Operations Manager

AFFIDAVIT

The Appellant honestly do believe that if the Court of Appeals would grant the review the facts would then attest to equity for the Plaintiff. That the same would be done by laws, statutes, and Constitutional requirements for equity under the law in review of sequence of denials in review. The cause is for a new case, and review of causes in 82-595-N, 82-885-N (83-7655)-83-H-1173-N(84-7163). Where equity will be denied, if sequence of events are not reviewed by requirements of the U.S. Supreme

Court. The Appellant pleads for a new cause of relief under the Emergency Motion FRAP Rule 17, and 27, as well as sequence of relief for Appellant under FRAP Rules (seq). Where the cause of action was under 42 USCA 2000 e (seq) and 28 USCA 1331, 1343 and 1346. The cause is consolidation and review under Emergency Rules due sequence of events in an equity case. Where a relationship to cause of time, conditions, and circumstance attests to Color of State actions in deceits, and responses to EEOC, as well as prima facie facts attesting to collateral causes exist ing out-weighting all other causes in review for actions otherwise not able to determine as causes where deceits is affirmed in records changes, and disparate treat ment under race animus, 42 USCA 1983,1981, 1985 (2)(3) and seq. 1986, and disparate treatment. The Appellant moves for a re-

view and new case in review granting all reliefs prior cited and affirmed in review

Mitchell E. James, Sr./s/

3/15/85 Ruth Thomas/s/ Notary

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

MOTION FOR EMERGENCY REVIEW, RULE 17 and 27

INTERLOCUTORY AND EMERGENCY MOTION FOR

FOR CERTIORARI DISTRICT COURT RECORDS

Mitchell E. James, Sr. Appellant

v.

Edwin M. Dixon, Individually

ALABAMA STATE PERSONNEL BOARD, ET. AL's.

Appellees

PROCEEDING AS VETERAN ATTEMPTING TO GET

EMPLOYMENT RIGHTS RESTORED, 38 USC#2022

/s/

Mitchell E. James, Sr.

IN THE UNITED STATES COURT OF APPEALS

ELEVENTH CIRCUIT

Mitchell E. James, Sr. 83-7655

Appellant USDC 82-885-N

v. (USDC 82-595-N)

Edwin M. Dixon, Invidually, 84-7163

MEMBERS ALABAMA STATE PERSONNEL BD. ET'AL

Appellees

MOTION FOR EMERGENCY RELIEF

MOTION FOR INTERLOCUTORY ORDERS RULE 17, and MOTION FOR STAY OF MANDATE WITH ENJOIN MENTS OF INTERLOCUTORY REVIEW FOR NEW TRIAL IN CONSOLIDATION.

The Appellant gives notice under Rule 17, and Rule 27 for Motion new trial and stay of mandate in a pro se cause. Where evidence in references in causes by out of sequence denials of equity and test of Mt. Healthy Bd of Education v. Doyle,429 U.S. 274 (1977). Where the cause continue to deny the sequence of events without test..

applied. The motions are before the court of Appeals for a new trial and review of the causes interlocutory by nature in denial of the Six Amendment Rights for a cause to deny the Eleventh Amendment right of...Citizen. Where Color of State prevails in all states of denials and prior requests. To deny the Appellant would be to deny Justice. Where Threats and denials prevails to deny said Justice. The Maxims of Equity demands a remedy of causes in a Motion for new trial and review under Interlocutory causes of sequence of events granting equity, in an Emergency Motion. Where the cause in this motion is before the Appeals Court within time of Rule 59 (seq) 60(seq), and Rule 6(seq) or FRAP 41, Under FRAP Rule 27, and FRAP Rule 17, and recent action of District Court.

The Appellant moves this court for new trial under Maxims of Equity in causes of

law, statutes, and causes of action in equity as prior stated before this court under 42 USCA 1983, 1981, 1985(seq), 1986 28 USCA 1343, 1346, and 18 USCA 241,242, 243, 245(b), 246 where 42 USCA 2000-e(seq) was the cause of action in each case,issued right to sue letters within statute of limitation and disparate treatment prevailed to deny the Rules of the Supreme Court test in sequence of events in retaliation to EEOC responses. Where deceit prevailed to deny the Eleventh Amendment Rights of the Plaintiff for the prima facie evidence of a cause of case 82-873-N filed in the District Court. The equity of Six Amendment denied in both of Appellant causes, and Eleventh Amendment rights and Bill of Rights before this Court. Motion for a new trial for Emergency reasons in Motion. All Orders of District Court Motioned in evidence.

The memorandum of facts indicates: (1) Facts prevailing in sequence the Appellant will prevail. (2) To deny sequence of events is to accent deceit as a method of ending justice for this Appellant. (3) There is no harm done to render justice equity from deceits. (4) Public interest is served. The cause is an emergency review of the District Court Orders most recent March 7, 1985 in both cases 82-885-N(83-7655) and 83-H-1173-N(84-7163) and all Orders Motions into evidence in review for Motion for New Trial in consolidation or enjoinment in choice of causes by the Appeals Court in review. The Appellant appeals for an Emergency Review FRAP #1(seq) 47, for relief under Emergency Relief. The Appellant motions in review all laws, cites, and causes prior presented in cases cited in request for Emergency Review. Where the Civil Rights Acts of

1866, 1870, 1871 and 1964, 1972 and Labor Relations Accs 1974 are motioned into review of all causes. The Appellant moves this Court for an Emergency Review with stay of Mandate for the Supreme Court, by Rule 17, and Rule 27 FRAP, in sequence of FRAP Rule #1 through 47 for Emergency Review and Relief for this Appellant in new casuse of action by review within the ten days of the recent District Court orders the same is notice and motioned into evidence for new trial and emergency Relief of prose cause.

RESPECTFULLY SUBMITTED:

Mitchell E. James, Sr. /s/

Appellant, Pro se.

AFFIDAVIT

The Appellant honestly do not believe facts attests to equity having been granted by laws, statutes, and rules of Maxims of Equity in the case review of the Dis-

trict Court cause in 82-595-N, 82-885-N nor 84-H-1173-N. The Appellant pleads for a new case and cause of relief in review under Emergency Relief Motion, in consolidation review of sequence of events in relationship to causes of EEOC and Prima Facie Evidents, as well as facts.

/s/
Mitchell E. James,Sr.
Appellant, Pro se

Subscribed and sworn before me this 15th, day of March 1985

/s/
Ruth Thomas, Notary Public

STATE OF ALABAMA

DEPARTMENT OF YOUTH SERVICES

P. O. Box 66

Mt. Meigs, Alabama 36057

Honorable Ingram Beasley Feb. 2, 1983

105 Crestview Drive

Birmingham, Alabama 36013

RE: Mitchell E. James Personnel Hearing

Dear Judge Beasley:

In accordance with the directions issued by the hearing officer at the pre-hearing conference in this case held Monday, January 31, 1983, the charges by Agency are hereby amended to read as follows:

(2) Violation of specific DYS policy: This is exhibited in your handling of a conduct report that had lapsed for almost two months. More specifically, you violated DYS policy by filing a disciplinary report requesting action be taken against one (name of person)

on April 19, 1982. Which filings was approximately two months after the action complainted of and approximately two months after such report should have been filed. Further, the hearing officer expressed a question concerning charge no. 1, wherein it stated that Mitchell E. James failed in not,"having rectified items number 2,5,6,7 and 8 of yearly employee guidance sheet". More specifically, this part of charge 1, charges Mitchell James with failing to have corrected the deficiences noted on the employee guidance sheet for the period 1/1/81 to 12/31/81 and listed on said sheet as comments to items number 2,5,6,7

and 8. If there are further questions, agency will respond immediately.

Yours very truly,

/s/ William J. Samford, II

Attorney III

cc: Willis Issac, Mitchell E. James

Richard Meadows

ALA CODES 1975(seq) 1984-85: (36-26-27) CAUSE IS IN VIOLATION OF SIX AMENDMENT AND IMPEACHED BY FOURTEENTH AMENDMENT, FOR CAUSE. FIRST AND SIX AMENDMENT DENIED, DUE PROCESS AND, IMPEACHED AS EVIDENCE. WHERE RICHARD JORDAN GRANTED PERMISSION FOR ACTION AND THEN RECOMMENDED DISMISSAL. IMPEACHED BEFORE THE PERSONNEL BOARD ALL CAUSES. BOARD DISMISSED BY ATTORNIES AND NO BOARD HEARING HELD, ATTORNIES INFLUENCED CAUSES. DENYING HEARING OF A BOARD. CONSTITUTIONAL INADEQUACY CLAIMED UNDER ALABAMA CODES 1975(seq) 1984-85. DUE PROCESS IMPEACHES ALL COURT FINDINGS.

IN THE MATTER OF APPEAL, MITCHELL E. JAMES BEFORE THE STATE PERSONNEL BOARD.4/20/83

This matter came to be heard upon the appeal of Mitchell E. James of his dismissal from the Department of Youth Services. The employee or his attorney and the Department of Youth Services entered into a stipulation that the appeal could be heard before a hearing officer. Pursuant to such stipulation and authority granted by this Board, Judge Ingram Beasley heard the appeal on February 15,16, 1983. The report of that hearing has been submitted and is now before the Board for consideration. After hearing oral arguments and reviewing the [OTHER INFORMATION BEFORE IT], the Board is of the opinion that the charges against Mr. James warrant dismissal. Therefore, the Board does hereby adopt the findings and recommendation of the Hearing Officer as its own, and does hereby order the dismissal of Mitchell E. James be sustained./s/Ballard,/s/Dixon,/s/Blackwell

IN THE UNITED STATES DISTEICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

MITCHELL E. JAMES, SR. Plaintiff

v. CA. 82-885-N

ALABAMA STATE PERSONNEL BOARD; et.al's

Defendants

ORDER

Plaintiff has filed numerous post-judgment motions in this cause, which the Court treats as motion to reconsider its ruling September 15, 1983. The Court notes that plaintiff's appeal was dismissed on February 1, 1984 by the Court of Appeals for the Eleventh Circuit which state,"To allow appellant to attack the final judgment ad nausem through repetitive motions to reconsider would undermine the prinicple of finality embodied in Rules "Yates v. Behrend, 280 F. 2d 64,65-66(D.C. Cir.1960) Slip op.at.6. In light of the numerous and

rep titive post judgment motions filed by plaintiff, Court has considered imposing financial sanctions against plaintiff for a violation of Rule 11, Federal Rules of Civil Procedures. This Rule clearly states

> If a pleading, or other papers is is signed in violation of this rule,the court, upon it own initiative, shall impose upon the person who signed it a representative party, or both, and appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper including a reasonable attorney's fee.

Although the court has decided not to impose these sanction at present, the court advises plaintiff that it views these and simular motions as meritless, and further advises plaintiff that such financial

sanctions may be imposed in response to any meritless motions in the future. Upon consideration of Plaintiff's motions to reconsider, it is Ordered that the same are hereby denied. Done this 7th day of March, 1985.

/s/ USDJ

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MITCHELL E. JAMES, SR. Plaintiff

v. CA.83-H-1173-N

ALABAMA STATE PERSONNEL BOARD, ET.AL's Defendants

ORDER

Plaintiff has filed a document entitled "Motion for Re-consideration..."which the Court treats as a Motion to reconsider its ruling on January 18, 1984. by its mandate issued January 20, 1985, the Eleventh Circuit Court of Appeals affirmed this Court January 18 ruling.

In light of said post-judgment motion here in the numerous and repetitive post-judgment motions filed by plaintiff in CA No. 82-885-N the Court has considered imposing financial sanctions against plaintiff for violation of Rule 11. Federal Rules of Civil Procedure. This Rule clearly states:

If a pleading, motion, or other paper is signed in violation of this rule, the court upon motion or upon its own initiative, shall impose upon the person who signed it, a represented part, or both an approprite sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filings of the pleading, motion, or other paper, including a reasonable attorney's fee.

Although the Court has decided not to imposed in response to any meritless motions filed in the future.

Upon consideration of plaintiff's motion to reconsider it is ORDERED that the same is hereby denied, DONE this 7th day of March 1985.

/S/ USDJ

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MITCHELL E. JAMES, SR.

Plaintiff CA. 82-595-N

vs

ALABMA STATE PERSONNEL DEPARTMENT;
AND HALYCON BALLARD, Individually, et.al's

Defendants

ORDER

This cause is now before the court on the motion to dismiss, filed February 11, 1983 by defendants Alabama Department of Youth Services and George M. Phyfer, Director of Alabama Department of Youth Services. As grounds therefore defendants state that

Plaintiff has recently filed a complaint, Civil Action No. 82-885-N which reiterated the allegations contained in this cause. Defendants further state that both suits involve the same factual and legal issues, that is that defendants discriminated against plaintiff while he was employed with the Department of Youth Service. Upon review of the two complaints the Court concur's with defendants' assertion and find that although plaintiff has included in CA No. 82-885-N several defendants not named in this cause of action, consolidation is unnessary and plaintiff will not be prejudiced by proceeding solely in Civil Action No. 82-885-N, Accordingly, it is...ORDERED that this cause of action be and the same hereby dismissed. It is further ORDERED that all other motions heretofore filed in this cause be and the same denied. Done this 16th day of February, 1983.... /s/ USDJ

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

MITCHELL E. JAMES, SR. Plaintiff

vs CA. 83-H-1173-N

ALABAMA STATE PERSONNEL BOARD, et.al's
Defendants

JUDGMENT

In accordance with the attached memorandum opinior, it is ORDERED, JUDGMENT and DECREE of this Court: 1 Plaintiff's motion for summary judgment is denied. 2 Defendants motions for summary judgment are granted. 3 Plaintiff have and recover nothing from defendants in this action by way of damages, the injunctive relief requested by plaintiff is denied, the plaintiff's complaint is hereby dismissed. 4. That court costs incurred in this proceeding are hereby taxes against plaintiff, for which execution may issue. Done this 18th day of January, 1984 . /s/ USDJ

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

MITCHELL E. JAMES, SR., Plaintiff

vs CA: 82-885-N

ALABAMA STATE PERSONNEL BD, et. al's

Defendants

JUDGMENT

In acordance with the attached memorandum opinion it is ORDERED, ADJUDGED AND DECREED that plaintiff have and recover noth ing from defendants by way of damages, and that the other relief plaintiff seeks in his complaint is hereby denied. It is fur- ORDERED that defendants' oral motion, made at trial for Rule 41(b) ruling, is hereby declared moot. It is further ORDERED that the court costs incurred in this proceeding be and they are taxed against plaintiff, for which execution may issue. Done this 15th day of September 1983 /s/USDJ

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

MITCHELL E. JAMES, SR. Plaintiff

vs CA 82-885-N

ALABAMA STATE PERSONNEL BOARD, AND Individual Members, Edwin Dixon, Velma Blackwell, and C. Frank McCorkle and State Department of Personnel Director Halycon Ballard and individually; and Alabama Department of Youth Services Bd., President B.G. Bryant individually; and George M. Phyfer, individually and as Director of the Department of Youth Services; Richard S. Jordan, Jr. individually

Defendants

MEMORANDUM OPINION

This cause arose out of the termination of employment of the Plainiff, Mitchell E. James, Sr. following a long history of refusals to promote plaintiff to positions

for which he alledgedly qualified. Plaintiff contends that defendants actions violated his rights under Title VII, 42 USC Section 2000 e; and under the First and Fourthteenth Amendment in violation of 42 USCA section 1981 and 1983. The trial of this case commenced August 30, 1983 and was completed August 31, 1983. The Court having jurisdiction under 28 USC Section 1343, and 42 USC Section 2000 e, pursuant to Rule 52 of the Federal Rules of Civil Procedure it now enters its findings of facts and conclusion of law. For the reason stated herein, the court finds for defendants and against plaintiff.

FINDINGS OF FACTS

1. Plaintiff James, a black male, at the time of this dismissal in May of 1982 was employed as a Counselor II at the Department of Youth Services at its Mt. Meigs

campus. Plaintiff was incharge of several staff membes who ran a dormitory at Mt. Meigs. Plaintiff obtained the position of Counselor II as the result of a settlement agreement in prior federal case in which he was a plaintiff. 2. Defendant Alabama State Personnel Board was created by the Merit System Act, Section 36-26-1 eq.seq. Codes of Alabama and consists of three persons appointed by the Governor of the State of Alabama. It conducts hearings and investigates violations of its rules and regulation. Ib 36-26-6.

3 Defendant Halycon Vance Ballard is, and was at the time of Plaintiff's dismissal, the Director of the State Personnel Depart ment. 4 Defendant Edwin M. Dixon was Chair man of the State Personnel Board. 5 Defend ant Velma Blackwell was Vice-Chairman of the State Personnel Board. 6. Defendant

Frank McCorkle was the third member of the State Personnel Board in May of 1982. 7 Defendant George M. Phyfer is the Director of Department of Youth Services(DYS),which is a state agency created to prevent juvenile delinquency. Ala. Code #44-1-20 et. seq. 8. Defendant B.G. Bryant is a member of DYS Board, which oversees the function of the department. Employee of the DYS are subject to the merit system coordinated by the State Personnel Board. 9. Defendant Richard S. Jordan is the supervisor of the Mt. Meigs camps at which plaintiff was employed and who was plaintiff's immediate supervisor. Defendant Jordan is black;all other defendants are white. 10. Beginning in the early 1970s, plaintiff became concerned that he was not being promoted to positions which he thought he was qualified to fill. As the years went by and the plaintiff became more frustrated with

Defendants alledgely errouneous decisions not to promote him, plaintiff began to file complaints with the State Personnel Board, The DYS Board, and the EEOC. 11. Plaintiff also became frustrated as supervisor of a dormitory at Mt. Meigs with superiors' apparent lack of concern with his repeated reports of student abuse by staff members of his dormitory. 12. Plaintiff repeatly sent memoranda and letters to defendant Jordan and others outlining his concerns and fears.

13. May 13, 1982, defendant Jordan wrote a letter to defendant Phyfer outlining thirteen reasons why he thought plaintiff was not capable of managing the dormitory and for which he recommended that plaintiff be terminated (Pltf's Ex.31) on May 21, 1982, defendant Phyfer wrote plaintiff informing him that based on Jordan's letter, he was being suspended without pay

for thirty days. (Pltf's Ex.32). The May 21, letter also informed plaintiff that a hearing was scheduled June 1, 1982 to consider Jordan's recommendation of termination. The hearing was held and plaintiff was fired as of June 1, 1982. 14 . At trial defendant Jordan testified that he recommended plaintiff be fired because plaintiff had difficulty in communicating with others, including staff at the dormitory; because he failed to properly appropriate staff at the dormitory;because he violated DYS policy by turning in student dicipline reports late; and finally because of insubordination. Jordan testified that plaintiff's insurbordination consisted of his constant barrage of correspondence to Jordan's office on matters that had been settled after a hearing. Jordan further stated that at times he was forced to spend eighty percent of his time on

plaintiff's problems and that this percentage was far out of proportions to the overall area of his supervision. 15. The evidence further showed that plaintiff was having difficulty with his staff, some of who requested transfers to another dormitory because of their inability to work with plaintiff. Some of the witnesses and exhibits described the situation in plaintiff's dorm as "chaotic" see e.q.,Plaintiff Exhibit 34. 16. Several of plaintiff own witnesses, who are black, testified that they had never suffered any racial discrimination while employed in the DYS. 17. Plaintiff took the stand and testified that he applied for the position of superintendent of Mt. Meigs campus, which was defendant Jordan's position, four times and never got it. Plaintiff stated he was was on the list of those qualified for "Specialist IV" but was never promoted or

appointed to that position. Plaintiff also testified he felt the hearing before the Personnel Board was unfair or deprived him of due process because the Board's Attorneys directed the hearings instead of the members of the Board. It is Plaintiff's position that he was "blackballed" and was never promoted because of his race and because he complained to EEOC. 18. Paul D. Thomas, the chief of recruitment and examnation for the State Personnel Board, testfied on behalf of defendants. Since part of plaintiff's claim is that he was qualified for that position and plaintiff history of applying and being tested for it. In 1975 DYS became part of the Alabama merit system and two new employment options were announced for Specialist IV positions-supervisory and administrative. Plaintiff applied for Supervisor IV but was not qualified under either option.

An opening was announced again January 1976 with the options being Administrative and "programs". Plaintiff applied for both and, although rejected for the Administrative option, was found to have met the minimum qualification for the program option. Plaintiff's name was placed on the register or list as available for appointment. On 1976 list of sixteen to seventeen names, plaintiff was ranked twelth based on the quality and quantity of his past work and on his education. Thomas testified that plaintiff was rated last on the list, but was elevated to twelth because of his veteran benefit points. In August of 1981 the register for Supervisor IV was prepared again; however, the title had been changed to Specialist IV. At this time only program option was announced. Plaintiff was found lacking in qualification for this position which required five

years of experience with problem children, three of which had to be at the level of Specialist III. Plaintiff was a Counselor II at the time.

Thomas admitted that the application form to take the examination for promotions does request that the applicant's race be indicated. Thomas testified that race was not considered part of an applicants qualifications. The race item was required for Federal reporting purposes.

CONCLUSION OF LAW

This Court has no doubt that plaintiff believe he has been discriminated against and treated unfairly by the defendants. Plaintiff believes that not only was he qualified to be functioning for DYS at a higher level, but that his termination was unfounded. Plaintiff's Title VII allegation is one of disparate treatment or

retaliation. He claims he was not promoted and because of his participation in the EEOC process. See 42 USCA 2000 e-3. This First Amendment claim must be viewed against Pickering v. Board of Ed. 391 U.S. 563 (1968). in which the Supreme Court stated that an employee's rights to free expression must be balanced with government's interest as an employer in the efficiency of its services. In Smalley v. City of Eatonville, 640 F2d 765 (5th Cir. 1981), the court reviewed the particular facts, agreed that the plaintiff communication threatened serious disruption, and concluded plaintiff's dismissal did not offend the Constitution. In so doing the court noted "that government employer has a particular interest in preserving the effectiveness of close working relationships between supervisors and their sub-

subordinates that require personal loyalty and confidence Ib at 768(citing Pickering v. Board of Education. 391 U.S. at 569-70 and n.3).

Mindful that each case must be viewed on its own facts, the Court concludes that the" barrage of communications" from the plaintiff and chotic working situation at plaintiff's dorm threatened serious disruption of the day to day activities at Mt. Meigs and plaintiff's dismissal did not violate his First Amendment right to free speech.

Further, the Court finds that plaintiff has failed to prove that race entered into any decision not to promote him or to fire him. The casual link, so necessary to a retaliation Title VII claim, between either race or plaintiff's participation in EEOC process or plaintiff's complaint

about student abuse and his dismissal was not shown by plaintiff. Plaintiff dismissal was only the culmination of a long history of problems arising out of plaintiff's inability to do his job, his mismanagement of staff and his refusal to follow his supervisor's instructions. It strains logic to conclude that Mr. Jordan, a black, recommended plaintiff termination for racial reasons, but it is undisputed that Mr. Jordan initiated the action that resulted in plaintiff's termination. Similarly, although plaintiff has shown the "color of law" requirement of Section 1983, this Court concludes that he has not been deprived of any "rights", priviledges or immunities secured by the Constitution and laws" 42 USCA 1983. Because this court finds that plaintiff race was not a factor in the decision to fire and not promote

him; and because his First Amendment rights were not violated thereby, plaintiff has failed to meet his burden of proving a violation of either Section 1981 or 1983.

A seperate judgment will be entered in accordance with this memorandum opinion.

Done this 15th day of September 1983.

/s/ USDJ